

UNITED STATES PATENT AND TRADEMARK OFFICE
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CBG/AGL

May 11, 2022

In re Jeanette Conrad-Ellis

Ex Parte Appeal No. 90002764

**Denise M. DelGizzi,
Chief Clerk of the Board:**

Appellant's "Motion to Suspend the Appeal and to Remand for Evidence not Previously Available and Additional Evidence" filed May 6, 2022 is noted.¹ Appellant seeks remand so the Examining Attorney can consider purported new evidence, namely, a new non-precedential decision issued by the Board on March 31, 2022 (*In re J. Spagnuolo & Associates, P.C.*, Serial No. 88789548), and to introduce over 600 pages of evidence "directed to the strength of the marks at issue, a topic which is also discussed in *Spagnuolo*." 25 TTABVUE 2-3.

A request under Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), to suspend and remand for consideration of new evidence must include a showing of good cause therefor (which may take the form of a satisfactory explanation as to why the evidence was not filed prior to appeal), and be accompanied by the additional evidence sought to be introduced. *See, e.g., In re Luxuria s.r.o.*, 100 USPQ2d 1146, 1147 (TTAB 2011)

¹ On October 25, 2021, the Board granted Appellant's first request for remand for additional evidence. The Board granted on December 9, 2021 Appellant's request to clarify the October 25, 2021 Board order.

(applicant's request for remand denied for failure to show good cause). The point in the appeal process at which the request for remand is made will be considered in the determination of whether good cause exists. TBMP § 1207.02 (2021). Generally, the later in the appeal proceeding that the request for remand is filed, the stronger the reason that must be given for good cause to be found. *Id.*

Appellant's filing appears to be disingenuous in that the *Spagnuolo* decision is not "new evidence;" it is merely a decision based on previously established law.² In addition, it appears that Appellant has used the *Spagnuolo* decision as a springboard to introduce voluminous additional evidence, all of which was previously available. Appellant cannot use the recently issued *Spagnuolo* decision, which again, is not new evidence, to circumvent the requirement that the additional evidence actually be new (i.e. previously unavailable). *See* TBMP § 1207.02.

In any event, Appellant can argue the merits of the *Spagnuolo* decision at the oral hearing on May 19, 2022. Appellant should note, however, that non-precedential Board decisions are non-binding and the Board discourages citation to such case law. *See In re tapio GmbH*, 2020 USPQ2d 1138, at *8 n.34 (TTAB 2020) (Board found unpersuasive non-precedential decisions decided on different records); *In re Society of Health and Physical Educators*, 127 USPQ2d 1584, 1587 n.7 (TTAB 2018) ("Board decisions which are not designated as precedent are not binding on the Board, but

² The situation at hand differs from that in the cases relied upon by Appellant, i.e., *In re Dekra e.V.*, 44 USPQ2d 1693, 1694-95 (TTAB 1997) and *In re Consolidated Specialty Restaurants Inc.*, 71 USPQ2d 1921, 1922 (TTAB 2004). The Board remanded the applications involved in those appeals for further examination after a change in practice (*Dekra*) or law (*Consolidated Specialty Restaurants*), neither of which is presented here. *Spagnuolo* was decided on current law.

may be cited and considered for whatever persuasive value they may hold.”); *In re Morrison & Foerster LLP*, 110 USPQ2d 1423, 1427 n.6 (TTAB 2014) (“Although parties may cite to non-precedential decisions, the Board does not encourage the practice.”).

In addition, Appellant seeks remand at a late stage in the proceeding. The appeal has been fully briefed, and as noted above, an oral argument is scheduled for next week on May 19, 2022.

Accordingly, Appellant has not shown good cause for the requested remand, especially at this late date. The request for remand is, therefore, denied. The oral hearing will proceed as scheduled.